

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ABDUL NASIR JIHAD,

Plaintiff,

v.

**2:07 CV 3
(Maxwell)**

JOYCE FRANCIS,

Defendant.

ORDER

It will be recalled that on January 16, 2007, *pro se* Plaintiff Abdul Nasir Jihad initiated the above-styled civil action by filing a civil rights Complaint and an Application To Proceed Without Prepayment Of Fees And Affidavit.

It will further be recalled that the case was referred to United States Magistrate Judge James E. Seibert in accordance with LR PL P 83.02, *et seq.*, and 28 U.S.C. §§ 1915(e) and 1915A.

On May 8, 2007, United States Magistrate Judge Seibert issued a Report And Recommendation wherein he recommended that the above-styled civil action be dismissed without prejudice for failure to prosecute. In this regard, it will be recalled that on January 16, 2007, the Clerk of Court sent the Plaintiff a Notice Of Deficient Pleading advising him that a failure to either pay the filing fee or to submit a Consent To Collection Of Fees And Prisoner Trust Account Report could result in the dismissal of his case without prejudice. It should be noted that the required forms were sent to the Plaintiff along with the Notice Of Deficient Pleading.

In his Report And Recommendation, Magistrate Judge Seibert provided the Plaintiff with ten (10) days from the date of service of said Report And

Recommendation in which to file the required documents; to file a motion to extend time to do so; to otherwise explain his reasons for noncompliance and/or to file objections to said Report And Recommendation and advised the Plaintiff that a failure to timely file objections would result in the waiver of his right to appeal from a judgment of this Court based upon said Report And Recommendation.

The Court's review of the docket in the above-styled action has revealed that the Plaintiff has still not filed the required forms; filed a motion to extend time to do so; or otherwise explained his reasons for noncompliance. Additionally, no objections to Magistrate Judge Seibert's May 8, 2007, Report And Recommendation have been filed. Accordingly, this matter is now ripe for review.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the Magistrate Judge's findings to which objection is made. The Court is not, however, required to review, under a *de novo* or any other standard, the factual or legal conclusions of the Magistrate Judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

Upon consideration of Magistrate Judge Seibert's May 8, 2007, Report And Recommendation, and having received no written objections thereto, it is
ORDERED that the Report And Recommendation entered by United States Magistrate Judge James E. Seibert on May 8, 2007 (Docket No. 5), be, and the same is

hereby, **ACCEPTED** in whole and the above-styled civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is **ORDERED** that the above-styled civil action be, and the same is hereby, **DISMISSED without prejudice** for failure to prosecute.

In light of the dismissal of the above-styled civil action, it is further **ORDERED** that the Plaintiff's Application To Proceed Without Prepayment Of Fees (Docket No. 2) be, and the same is hereby, **DENIED as moot**. It is further **ORDERED** that the Clerk of Court shall enter judgment for the Defendant. It is further

ORDERED that, should the Plaintiff desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk of Court is directed to transmit copies of this Order to the *pro se* Plaintiff and to any counsel of record.

ENTER: February 12, 2009

/S/ Robert E. Maxwell
United States District Judge

